IN THE HIGH COURT OF JUDICATURE AT BOMBAY

O.O.C.J.

NOTICE OF MOTION NO.3776 OF 2003

IN

SUIT NO.1799 OF 2001

...

Yusuf Ismail ...Plaintiff

v/s.

Manekji Pestonji Trust
and others. ...Defendants

...

Mr.V.C.Ghosalkar for the Plaintiff.
Mr.P.P.Chavan i/b Little & Co. for the Defendants Nos.6 & 7 in support.

...

CORAM: D.K.DESHMUKH, J.

DATED: 25TH JANUARY,2007

P.C.:

1. This Notice of Motion is taken out by the Defendants Nos. 6 & 7 for setting aside the order dated 20-11-2003 passed in Notice of Motion No.1740 of 2001. Perusal of the record shows that when the motion was heard by the court for ad-interim order on 3rd August, 2001 the Defendants Nos. 6 & 7, who have taken out this Notice of Motion, were served with the motion and had appeared in the court. The motion came up for final hearing before the court on 20-11-2003. Defendants Nos.6 & 7 though they were served with affidavit in support of the motion in the month of August, 2001 did not file their reply till the court took up the motion for final hearing. Therefore, in the absence of any affidavit filed in reply accepting the averments made in the affidavit filed in support of the Notice of Motion, the court made the order dated 20-11-2003.

2. In the affidavit filed in support of the motion only reason for not filing reply given is Defendants No.7’s ill-health. A medical certificate has been

filed in support of that claim. Perusal of that medical certificate shows that the Defendant No.7 was unwell only during the month of August, 2003 and November, 2003. I do not find any explanation given why Defendant No.6 could not file affidavit-in-reply. I also do not find any explanation why, assuming that the Defendant No.7 was ill during the month of August,2003 and November, 2003, reply could not have been filed for a period of more than two years. Thus, as Defendants Nos.6 & 7 have not given any acceptable explanation for not filing the reply, the order cannot be set aside. Motion is, therefore, disposed of.

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